

REMARKS/ARGUMENTS

Claims 1-56 were pending at the time of the mailing of the outstanding Office Action. Claims 14-27 and 46-56 have been withdrawn from consideration. By this amendment, claims 2, 7, 11, 39-41 and 44-45 have been cancelled without prejudice or disclaimer as to the subject matter contained therein. Claims 1, 4, 8-9, 12-13 and 42-43 have been amended. No new claims have been added. In light of the withdrawal of claims 15 and 16, paragraph [0008], has been amended to eliminate reference to claims 15 and 16 *per se*, in favor of reciting the subject matter of those claims.

In the Office Action of 28 September 2004, the Examiner rejected claims 1-8, 10-13, 28-38 and 40-45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,561,968 to Dissing, et al. Claims 1-5, 7-13, 28-33 and 39-45 stand rejected as being anticipated by U.S. Patent No. 3,890,953 to Kraus, et al. Claims 1-8, 10-13, 28-38 and 40-45 stand rejected as anticipated by U.S. Patent No. 4,674,482 to Waltonen, et al. Finally claims 1-2, 7-8, 10-13, 29 and 40-45 stand rejected as being anticipated by U.S. Patent No. 5,211,622 to Liboff, et al. or U.S. Patent No. 5,718,2436 to Vona.

To anticipate a claim, a reference must teach all elements of the claim (MPEP § 2131). Claim 1 has been amended to recite the presence of an implant, adapted to be placed in a blood vessel, contactlessly receive stimulation energy from the excitation device and produce stimulation currents. Support for this amendment can be found in the specification in paragraph 20 and in original claims 2, 11 and 41, now cancelled. While the Examiner previously indicated that the limitations of claims 11-13 provide statements of intended use, the amendment to claim 1 recites additional structure of the device, and not its intended use. Claim 1, as amended, patentably distinguishes over the cited prior art. Specifically, Dissing et al do not teach or suggest an implant, adapted to be placed in a blood vessel, contactlessly receive stimulation energy from a stimulation device and produce stimulation currents. Kraus et al provide a device which applies a magnetic field to a bone to promote growth but they do not provide an implant adapted to be placed in a blood vessel to be used in such a system. Waltonen et al provide a device for applying a

magnetic field to animal tissue to promote healing, but do not teach or suggest the use of an implant to contactlessly receive stimulation energy and to produce a stimulation current. Finally, Waltonen et al and Vona provide methods for treating cells with magnetic fields, but these methods also do not teach or suggest the use of implants adapted to be placed in a blood vessel, contactlessly receive stimulation energy and produce a stimulation current.

The outstanding Office action was mailed on 28 September 2004. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, no petition for an extension of time or accompanying fee is believed to be due in making this response. In this response, claims 2, 7, 11, 40-41, and 44-45 have been cancelled and no claims have been added. Therefore, no additional claim fees are believed to be due. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Cunniff", with a stylized, flowing script.

John J. Cunniff
Reg. No 42,451
Hahn Loeser + Parks LLP
1225 W. Market St.
Akron, OH 44313

Attorney for Applicants